

SETTLEMENT AGREEMENT
BETWEEN
THE CITY OF GALLUP
AND
PUEBLO OF ZUNI

This Settlement Agreement ("Settlement Agreement") is entered into this 5th day of January, 2017, between the City of Gallup ("City" or "Gallup") and the Pueblo of Zuni ("Zuni"), a federally recognized Indian Tribe (collectively the "Parties").

Recitals

Whereas, the City filed its Third Amended Application No. G-22 *et al.* ("City's Application") with the New Mexico Office of the State Engineer ("OSE") on September 22, 2010, seeking a new appropriation of groundwater in the amount of 5,000 acre-feet per year ("afy"), to be diverted from the City of Gallup's ("Hogbacks") Well Field as that is defined in Exhibit No. 1 of the City's Application and the Ciniza Well Field as that is defined in Exhibit No. 2 of the City's Application, with up to 1,000 afy diverted from the Ciniza Well Field, for municipal and related purposes as set forth more fully in the City's Application, for use in the municipal service area of the City of Gallup and adjacent areas in McKinley County, including the service areas of the Navajo-Gallup Water Supply Project;

Whereas, the City's Application was amended on December 12, 2016 ("Fourth Amended Application") to reduce the total average pumping quantities sought and other modifications;

Whereas, Zuni filed a timely protest to the City's Application;

Whereas, Zuni claims both aboriginal and other senior, federally reserved water rights in the Zuni River Basin, including rights to the surface waters and interconnected groundwater of the Rio Nutria and is concerned about potential surface water effects on the Rio Nutria that could result from groundwater diversions from the granting of the City's Fourth Amended Application;

Whereas, Gallup and Zuni have jointly identified a tract of land approximately 160 acres in size in the Bear Ridge Subdivision, Tract 1, in the NW¼ of Section 17, T12N, R15W, NMPM, that can be purchased ("Krouth Property") and legal constraints can be placed on the parcel to prevent development that may cause adverse impacts to the Rio Nutria;

Whereas, Zuni will be acquiring certain parcels of land within the former Ft. Wingate Depot Activity ("Ft. Wingate Lands"). *See* S. Rep. No 114-255 at 1869 (2016), and Map of the Fort Wingate Depot Activity Negotiated Property Division (April 2016); and

Whereas, the Parties believe that it is in their mutual interest to settle their differences through this Settlement Agreement.

Covenants

NOW, THEREFORE, in exchange for the mutual covenants, agreements and consideration described herein, the Parties agree as follows:

1. Gallup will purchase the 160-acre Krouth Property at a price acceptable to the City and in accordance with the laws of the State of New Mexico.
2. If the Fourth Amended Application, or any successor Application ("G-22 Application"), is granted in whole or in part, the City will, within 30 days, place a conservation easement on the Krouth Property. The Parties will agree on mutually acceptable language for a conservation easement prior to the closing date for Gallup's acquisition of the Krouth Property, consistent with other conservation easements on property held in the area by New Mexico Department of Game and Fish, to prevent development that may adversely affect the Rio Nutria. The City may retain the Krouth Property or transfer it in whole or in part to the New Mexico Department of Game and Fish or another agency of the State of New Mexico mutually acceptable to the Parties, subject to the conservation easement.
3. If the G-22 Application is not granted, Gallup may sell or otherwise convey the Krouth Property subject to the terms and conditions in this paragraph. If the G-22 Application is not granted and the City decides to sell the Krouth Property, Zuni shall have the first opportunity to purchase it, at Gallup's purchase price, plus all costs and fees associated with the purchase, not to exceed \$160,000. If Zuni exercises its first option to buy the Krouth Property from Gallup, it will place a conservation easement on the property to prevent development that may adversely affect the Rio Nutria. Zuni will have 30 days from notification that Gallup has decided to sell the Krouth Property to exercise this option and 45 days after the exercise of this option to close on the Krouth Property for cash.
4. If Zuni notifies Gallup that it desires water service on Ft. Wingate Lands, Gallup will provide Zuni with water at Zuni's Ft. Wingate Lands at 80% of Gallup's "base commercial rate." Zuni shall be responsible for and pay for all related infrastructure from the end of Gallup's then-existing line which end is currently on the frontage road near Red Rock Park.
5. If Zuni notifies Gallup it desires electricity service on Ft. Wingate Lands, Gallup agrees to provide such electricity service to Zuni's Ft. Wingate Lands at prices and conditions to be negotiated at a later date. Zuni shall be responsible for and pay for all related infrastructure costs for delivery of electricity service in accordance with Gallup's then-existing policies for extending such service.
6. Gallup agrees to transfer to Zuni a one-acre well site adjacent to the Zuni Reservation located in Section 12, T12N, R18W if the G-22 Application is granted, within 30 days of it being granted.

7. Zuni agrees to withdraw its protest to the G-22 Application within 10 days of Gallup's acquisition of the Krouth Property and waive impairment from G-22.
8. Consistent with this settlement and withdrawal of its protest, Zuni will not advocate, formally or informally, for denial of the G-22 Application, including as it pertains to the Rosebrough wells and Ft. Wingate Lands.
9. If Gallup's G-22 Application is granted and Gallup fails to place a conservation easement on the Krouth property within 30 days as set forth in this Agreement, Zuni shall be entitled to seek specific performance of the terms of this Settlement Agreement in a court of competent jurisdiction. The prevailing party shall have the right to collect from the other party its reasonable costs and fees incurred in interpreting or enforcing this Settlement Agreement.
10. In the event the G-22 Application is denied by the OSE and such denial becomes final through appeal or failure to appeal, and subject to the terms of Paragraph 3, this Settlement Agreement shall be null and void and no party shall thenceforth have any right or obligation hereunder.
11. The Parties represent and warrant that they are authorized to execute this Settlement Agreement on behalf of themselves and do so freely and voluntarily.
12. Execution of this Settlement Agreement by all institutional entities signifies that all provisions of this Settlement Agreement have been approved by those entities' respective governing bodies, if required, and that those entities bind themselves to the obligations and benefits of this Settlement Agreement.
13. This Settlement Agreement shall be governed by the laws of the State of New Mexico.
14. The Parties represent that they have carefully read and reviewed this Settlement Agreement and that they understand it.
15. The Parties acknowledge that this instrument constitutes the entire agreement of this compromise settlement.
16. In the event that any provision contained in the Settlement Agreement shall be held void, unenforceable, invalid or illegal by a court of competent jurisdiction, the remaining provisions of this Settlement Agreement shall not be held void, unenforceable, invalid or illegal and all such other provisions shall continue in full force and effect.
17. This Settlement Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.
18. Any notice, consent or other communication required by this Settlement Agreement shall be in writing and delivered (a) by certified United States Postal Service mail (postage

prepaid, return receipt requested), or (b) by nationally recognized overnight courier (charges prepaid and with signature required upon receipt); notice may be provided by the methods in (a) or (b) or by email transmission with email confirmation of receipt from recipient. All notices, consents, or other communications required by this Settlement Agreement shall be deemed to have been given upon signature of recipient if sent by methods in (a) and (b) or for those specific instances where email is allowed then upon recipient's confirmation of receipt. A Party may revise their notice address information by following the procedures in this provision. Notices shall be addressed as follows:

If to the City:

c/o Mr. George Kozeliski
City Attorney
City of Gallup
Post Office Box 1270
Gallup, NM 87305-1270
attorney@gallupnm.gov

and

City Clerk
City of Gallup
Post Office Box 1270
Gallup, NM 87305-1270
clerk@gallupnm.gov

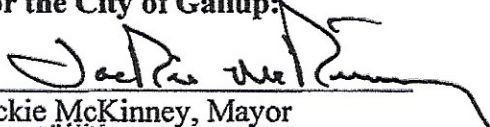
If to Pueblo of Zuni:

Governor Val R. Panteah, Sr.
Zuni Indian Tribe
P.O. Box 339
Zuni, NM 87327
val.panteah@ashiwi.org

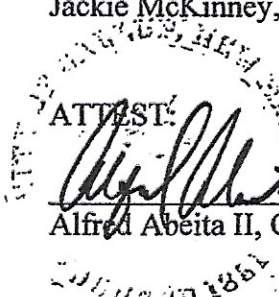
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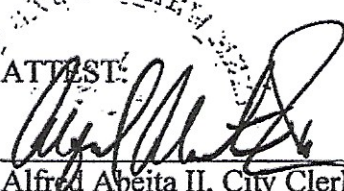
Andres Cheama
Water Rights Program Director
Zuni Indian Tribe
P.O. Box 339
Zuni, NM 87327
andres.cheama@ashiwi.org

For the City of Gallup:



Jackie McKinney, Mayor

01/11/17
Date


ATTEST:


Alfred Abeita II, City Clerk

For Pueblo of Zuni:


Name: Val R. Panteah, Sr.
Title: Governor, Zuni Indian Tribe

1/5/17
Date